Nos. 37 and 38

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, APPELLANT

v.

TOWNSHIP OF MUSKEGON, A MUNICIPAL CORPORATION, ET AL.

CONTINENTAL MOTORS CORPORATION, ETC., APPELLANT

v.

TOWNSHIP OF MUSKEGON, A MUNICIPAL CORPORATION, ET AL.

ON APPEALS FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR APPELLANTS

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OPINIONS BELOW

The opinion of the Circuit Court of Muskegon County, Michigan (R. 210–216), is not reported. The opinion of the Supreme Court of Michigan (R. 223–228) is reported at 346 Mich. 218.

JURISDICTION

The judgment of the Supreme Court of the State of Michigan was entered on June 28, 1956. (R. 228–229.) A notice of appeal was filed by appellants United States and Continental Motors Corporation on September 14, 1956. (R. 229–231.) Probable jurisdiction was noted on January 14, 1957. (R. 231.) The jurisdiction of this Court to review the decision below by direct appeal is conferred by 28 U. S. C., Section 1257.

QUESTION PRESENTED

Real property owned by the United States was occupied by Continental Motors Corporation under an occupancy permit, terminable at will, granted to Continental for the exclusive purpose of producing material for the Army. The Township of Muskegon, Michigan, has assessed taxes against Continental, as a user of this property, pursuant to a state statute which directs that taxes shall be collected from a lessee or user of tax-exempt realty "in the same amount and to the same extent as though the lessee or user were the owner of such property." A proviso in the statute creates an exception should the United States make an equivalent payment in lieu of these taxes. The statute further provides that the taxes shall constitute a debt of the lessee or user to the locality but shall not become a lien against the property.

The question presented is whether this statute, on its face and as here applied, is unconstitutional in that it invades the immunity of federal property from taxation by the states.

STATUTE INVOLVED

Michigan Public Act 189 of 1953 is set forth in the Appendix, *infra*, pp. 8–9.

STATEMENT

On January 1, 1954, the United States was the owner in fee simple of two parcels of property, on which there were improvements consisting of a manufacturing plant, located in Muskegon Township, Muskegon County, Michigan. (R. 2–3.)

This improved property, known as Plancor 166,[1] together with a large amount of personal property consisting of machinery, equipment and other industrial facilities, was furnished without charge by the United States to Continental under a permit, the property to be occupied and used by the latter solely for the purpose of performing certain Government contracts. Under the contracts, Continental was to install, at the expense of the United States, various production facilities, these to be used in turn for the manufacture of military equipment and supplies for the United States Army. (R. 42–43, 88–89, 92, 117, 210–211.) In computing the price of the equipment and supplies produced, Continental could not attribute any element of cost to the facilities furnished by and at the expense of the United States. (R. 145.)

In 1954, Plancor 166 was used by Continental exclusively for the production of material as provided in the agreement for occupancy and supplements thereto. (R. 22.) The United States has agreed to reimburse

[1] Plancor 166 is also referred to at times as the Getty Street Plant. (R. 22.)

Continental for all lawful taxes imposed upon it with respect to Plancor 166. (R. 149.)

The Supervisor of Muskegon Township "made an assessment of all of the real property in his township liable to taxation on tax day, *i. e.*, January 1, 1954, at the true cash value, as required of him under Section 7.27 M. S. A." (R. 21.) Pursuant to Act No. 189, Public Acts of Michigan (1953), he valued, at the r true cash value, the two parcels of land and improvements known as Plancor 166. He valued these parcels precisely as he would have done had they been owned in fee simple and occupied by Continental Motors Corporation. (R. 21.) No attempt was made to separate or distinguish between the value of the fees and the value, if any, of Continental's right of occupancy. The valuations were set down on the tax rolls, and tax bills were thereafter issued by the Treasurer's office of the Township to Continental Motors Corporation. These bills were computed by applying the regular 1954 property tax rates in the same way that those rates are applied to properties owned by private persons. (R. 21, 198–201.)

The bills were not paid and suit was instituted against Continental for the amount of the assessed taxes in the Circuit Court of Muskegon County. The United States intervened as a party-defendant. (R. 1–5.)

On August 23, 1955, a judgment in favor of the taxing authorities was entered by the trial court. (R. 216.) On appeal, the Supreme Court of Michigan affirmed. This appeal followed.

Appellants have contended, at every stage of the proceedings, that Act 189 is repugnant to the Constitution of the United States in that it authorizes a tax upon real property owned by the United States, infringes the sovereign immunity of the United States, and violates the Fourteenth Amendment to the Constitution. The constitutional contentions were raised in the trial court in the answer filed by Continental (R. 9–12), were incorporated by reference in the intervening petition of the United States (R. 16), and were urged in the briefs filed in the trial court and in the Supreme Court of Michigan. They were considered but rejected both in the trial court and in the Supreme Court of Michigan. (R. 210–216; 223–228.)

ARGUMENT

MICHIGAN ACT 189, ON ITS FACE AND AS HERE APPLIED, RESULTS IN A DIRECT IMPOSITION OF TAX UPON FEDERAL PROPERTY. IT IS ALSO "SPECIAL LEGISLATION" DIRECTED AT FEDERAL PROPERTY.

In the brief filed by appellants in the companion case of *United States and Borg-Warner Corp* v. *City of Detroit*, No. 26, this Term, it is urged (pp. 13–28) that Michigan Act 189 (Appendix, *infra*, pp. 8–9) is violative of the Constitution of the United States both because the levy which it commands is a direct imposition upon federal property and because it is "special legislation" peculiarly designed to have that effect. The invalidity of the statute, as we there elaborate, is rooted in the fact that it makes no effort to distinguish between the ownership interest of the United States and the limited interest of the lessee or user;

on the contrary, Michigan has undertaken to tax the lessee or user of tax-exempt property as if he were the owner. All of the arguments advanced in appellants' brief in No. 26 are equally applicable here and are adopted in full for purposes of this brief.

While, in our view, these arguments are fully dispositive here, we would point out additionally that the instant case is, if anything, stronger. In *Borg-Warner*, there is doubtless a limited, separable property interest in the lessee which is susceptible of appraisal—an interest which Michigan could tax if it chose to proceed upon that basis.[2] It is most doubtful, however, whether there is any such property interest in Continental. Continental (unlike Borg-Warner) has no lease. It is a user whose right of occupancy is terminable at will.[3] Under its permit, moreover, it has no right to engage in production for itself as principal. It is strictly an agent or instrumentality for the United States, using facilities of the United States to produce for the United States. We believe, in short, that Continental has no measurable property interest in the facilities which it occupies and that the Governmental interest is not only paramount but complete.

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[2] Congress has consented to such taxation. Act of August 5, 1947, c. 493, 61 Stat. 774.

[3] See, *e. g.*, Sections 7–103.21, 8–701 and 8–702 of the Armed Services Procurement Regulations issued by the Department of Defense under the authority of the Armed Services Procurement Act of 1947, c. 65, 62 Stat. 21.

CONCLUSION

For the reasons stated herein and in the brief for appellants in No. 26, to which the Court is respectfully referred, the judgment below should be reversed.

Respectfully submitted.

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SEPTEMBER 1957.

APPENDIX

Michigan Public and Local Acts (1953), p. 252:

PUBLIC ACT NO. 189

AN ACT To provide for the taxation of lessees and users of tax-exempt property.

The People of the State of Michigan enact:

211.181 Taxation of lessees and users of tax-exempt property; exception. [M. S. A. 7.7 (5)]

Sec. 1. When any real property which for any reason is exempt from taxation is leased, loaned or otherwise made available to and used by a private individual, association or corporation in connection with a business conducted for profit, except where the use is by way of a concession in or relative to the use of a public airport, park, market, fair ground or similar property which is available to the use of the general public, shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property: *Provided, however,* That the foregoing shall not apply to federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed or property of any state-supported educational institution.

211.182 Assessment and collection; action of assumpsit. [M. S. A. 7.7 (6)]

Sec. 2. Taxes shall be assessed to such lessees or users of real property and collected in the same manner as taxes assessed to owners of real property, except that such taxes shall not become a lien against the property. When due, such taxes shall constitute a debt due from the

lessee or user to the township, city, village, county and school district for which the taxes were assessed and shall be recoverable by direct action of assumpsit.

This act is ordered to take immediate effect.

Approved June 10, 1953.

U. S. GOVERNMENT PRINTING OFFICE: 1957